

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF MARICOPA**

3 SUSAN MORAN and JOHN UDALL,

4
5 Plaintiffs,

6 vs.

7 GALE L. GARRIOTT, in his capacity as
8 Director of the Arizona Department of Revenue,
9 the ARIZONA DEPARTMENT OF REVENUE
 of the State of Arizona,

10 Defendants.

No. TX 97-00119

No. TX 97-00131

No. TX 97-00150

(Consolidated)

**NOTICE OF SETTLEMENT AND
SETTLEMENT HEARINGS**

(Assigned to the Honorable
Mark W. Armstrong)

11
12 **PLEASE READ THIS NOTICE CAREFULLY**

13 **THIS NOTICE RELATES TO PENDING LITIGATION AND A PROPOSED**
14 **SETTLEMENT OF THIS LITIGATION AND CONTAINS IMPORTANT INFORMATION**
15 **AS TO RIGHTS YOU MAY HAVE TO RECEIVE TAX REFUNDS.**

16 **YOUR RECEIPT OF THIS NOTICE DOES NOT INDICATE THAT YOU ARE ELIGIBLE**
17 **FOR A REFUND OR THAT ANY CLAIM FILED BY YOU FOR A REFUND SHALL BE**
18 **REVIEWED PURSUANT TO THE PROPOSED SETTLEMENT DISCUSSED IN THIS**
19 **NOTICE.**

20 **ALL DECISIONS ON WHETHER ANY REFUND CLAIM YOU FILED WILL BE**
21 **REVIEWED FURTHER OR WHETHER YOU WILL BE CONSIDERED ELIGIBLE FOR**
22 **ANY REFUND WILL BE COMMUNICATED TO YOU ONLY IF AND AFTER THE**
23 **PROPOSED SETTLEMENT DISCUSSED IN THIS NOTICE RECEIVES FINAL**
24 **APPROVAL FROM THE COURT BEFORE WHICH THIS CASE IS PENDING.**

25 NOTICE IS HEREBY GIVEN THAT A PROPOSED SETTLEMENT ("Settlement") HAS
26 BEEN reached in the above-captioned Litigation ("Litigation"). The above named plaintiffs
27 ("Plaintiffs") filed suit to recover the Arizona income taxes paid by federal employees on mandatory
28 contributions to federal retirement programs ("Claimants"). It has been determined that the former
 Arizona tax law discriminated against certain of those federal employees in violation of 4 U.S.C. §
 111. The Litigation is back before the Tax Court upon remand from the Supreme Court of Arizona
 to address the Plaintiffs' Claims that additional refunds are due Claimants for one or more of the

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1 years 1985 to and including 1990. It has been finally determined that the Arizona Tax Law for years
2 after 1990 does not unlawfully discriminate against federal employees. This notice is not an
3 expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by
any party in this Litigation. The purpose of this notice is to inform you of the Court's order granting
preliminary approval of the proposed Settlement, and to notify you of certain rights you may have.

4 1. **Terms of Proposed Settlement.** Subject to Tax Court approval and other conditions, the
5 Plaintiffs and the Arizona Department of Revenue ("Department") have agreed on a Settlement
6 under which the Department will evaluate certain individual refund claims ("Claim(s)") filed with
the Department before July 9, 1998 for eligibility for further refunds. The refund payments will be
7 in final settlement of all Claims by Claimants against the Department for the years 1985 to 1990.
8 The proposed Settlement is a compromise of disputed claims and does not represent an admission of
liability or responsibility on the part of the Department to pay refunds.

9 A. **Eligibility for Refunds.** In 1998, the Department issued Individual Income Tax
10 Ruling 98-1 ("ITR 98-1). Under this ruling, the Department paid refunds of certain individual
11 refund Claims. As part of its Settlement obligations, and except as stated below, the Department
12 agrees to evaluate for further refund eligibility any individual refund Claim that was filed prior to
13 July 9, 1998 and that was either not previously evaluated for eligibility by the Department, or that
14 was previously denied as being "untimely" or for reasons that were not otherwise specified in the
15 denial paperwork. However, the Department shall not evaluate further any Claims that the
16 Department previously denied for the following reasons: 1) because the Department determined that
17 no sufficient evidence existed that the Claimant had made any federal retirement pension
18 contributions during the relevant tax year(s) (including those Claimants for whom the Department
19 had determined no sufficient evidence existed that they were employed by the federal government
20 during the relevant tax year(s)); 2) because the Department determined no sufficient evidence
existed that the Claimant filed an Arizona tax return for the tax year for which the Claimant seeks a
refund; or 3) because the Department determined that the Claimant had no Arizona tax liability or
paid no Arizona income taxes in the tax year(s) for which the Claimant made his or her Claim(s).
All Claims falling within the foregoing three (3) categories are referred to hereafter as the "Denied
Claims." The Department shall also not evaluate further any Claims for any years on which any
refund payment has been made previously by the Department (the "Paid Claims"), and all such
Claims shall be considered by all parties to have been paid in full for the years paid.

21 In deciding which tax years each Claim's eligibility for refund or credit will be evaluated for,
22 the Department will evaluate any Claim eligible for review that was filed using the protective claim
23 form issued by the Department with the 1990 Arizona income tax form (the "1990 Claim Form") for
24 eligibility in tax years 1985 through 1990, except to the extent the Claim already qualifies as a
25 Denied Claim or Paid Claim for any of those tax years. The Department will evaluate all Claims
26 eligible for review that were not filed on the 1990 Claim Form for eligibility only for any of the tax
years 1985 through 1990 expressly identified by the Claimant on his/her Claim filing. Thus, for
example, a protective claim form filed in 1995 checking boxes for 1990, 1992 and 1993 will only be
evaluated for eligibility in 1990. However, evaluated Claims that expressly indicate a Claim for

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1 1990, or that designate no particular tax year will be first evaluated for eligibility in tax year 1990.
2 If such a Claim is determined to be eligible for refund or credit in 1990, including a Paid Claim for
3 1990, the Department shall then evaluate the Claim for eligibility in 1989, and, so long as the
4 evaluations of such Claims continue to show eligibility for refund or credit in the year under review,
5 the Department shall review the Claim for eligibility in the preceding year stopping after any review
6 necessitated by these terms for eligibility in tax year 1985. At the point at which the evaluation
7 determines that such a Claim is not eligible for refund or credit in a given year, the Department shall
8 not evaluate the Claim for eligibility in any preceding year. At no point shall any Paid Claim be
9 evaluated for further refund or credit eligibility. Also, Claims that specifically designate only years
10 after 1990 will not be reviewed for eligibility, but will be denied as failing to file an eligible claim.
11 For instance, if a Claimant filed a 1995 claim form marking 1992, 1993 and 1994 as the relevant
12 claim years, the Department will not review the Claim for eligibility.
13

14 In determining eligibility the Department shall first attempt to access substantially the same
15 types of data sources used to review claims under the program implemented pursuant to ITR 98-1.
16 The Department intends to utilize such data to the extent such data is still available to the
17 Department, and in the forms, if any, that such data has been supplemented or restored since the
18 release of ITR 98-1. In determining eligibility, the Department will attempt to review all data in its
19 possession which is feasible and relevant to the eligibility review. To the extent, if any, that the
20 Department does not have the necessary data in its possession, the Department will request the data
21 from the Claimant.

22 **B. Refund Calculation.** In calculating refunds, the Department shall follow a process
23 similar to that used in determining the initial refunds paid in the Litigation during 1998 under the
24 program implemented pursuant to ITR 98-1.

25 **C. Additional Information.** In the case of some Claimants, the Department may need
26 additional information to determine whether a refund is due and the amount of any refund. There is
no requirement for a Claimant to file anything at this time. In the event additional information is
required to determine your entitlement or the amount of the refund due you, you will be notified in
writing by the Department. However, to minimize the possibility of subsequent delay, Claimants are
encouraged to take steps to preserve whatever tax records they may have for tax years 1985 to and
including 1990, including, but not limited to, Arizona tax returns, federal tax returns, W-2's, and any
related documents, statements or other records concerning mandatory contributions to federal
retirement programs.

27 **D. Pending Appeals and Deadlines for Appeal.** Pursuant to the terms of the June 17,
28 1998 Judgment ("1998 Judgment") previously filed and entered in this Litigation, administrative
action by the Department on appeals of previously Denied Claims has been stayed. Upon entry of a
final judgment approving this Settlement, the stay on these pending administrative appeals and of
any unexpired deadlines for appeals of previously Denied Claims will be lifted and the Department
will continue to process appeals of Denied Claims pursuant to the existing administrative appeals
procedures of the Department.

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1 **E. Claims Not Eligible for Further Review.** Within a reasonable time after entry of a
2 final judgment approving the Settlement, the Department shall notify Claimants whose Claims are
3 not eligible for further review (for example, Claims filed on or after July 9, 1998). Appeals of the
4 Department's determinations must be made in accordance with the existing administrative appeals
procedures of the Department.

5 **F. Calculation Notice.** The Department has reserved the right to inform each Claimant
6 by written notice of its refund calculation prior to issuing the refunds. The notice will also set forth
the administrative appeals procedure for Claimants to object to any refund notice.

7 **G. Other Debts.** If a Claimant is indebted to the State of Arizona or the United States, a
8 refund under the Settlement will be offset against such debts to the extent authorized by law.

9 **H. Costs of Settlement Administration.** The Department shall bear all costs of
10 administering the Settlement; provided, however, that the Settlement is contingent upon the
11 Department obtaining sufficient additional appropriations from the Arizona Legislature to allow the
Department to implement the evaluation process agreed upon without using the Department's normal
operating funds.

12 **I. Payment of Refunds/Credits.** It is estimated that the determination and the payment
13 of refunds or credits will be completed by approximately one year from the date of final Tax Court
14 approval of the proposed Settlement. In the event payment is delayed, the Department shall
15 establish to the satisfaction of the Tax Court that the delay in payment is justified by good cause.

16 **J. Administrative Appeals.** All appeals of any determination of the Department under
17 the Settlement shall be pursuant to the existing administrative appeals procedures of the Department
and Arizona law.

18 **K. Community Property, Decedents and Undeliverable Refunds.** In resolving
19 disputes of divorced Claimants and in determining the process for determining the disposition of
20 undeliverable refunds and refunds of deceased Claimants, the Department shall exercise its
discretion under the statutes governing these matters.

21 **L. Subsequent Notice.** Status reports as to developments, if any, in the administration
22 of the Settlement will be posted on the Department's internet website, www.azdor.gov.

23
24 **2. Plaintiffs' Counsel.** Plaintiffs' counsel are Randall D. Wilkins, Paul V. Bonn, Brian J.
25 Campbell and D. Michael Hall of Bonn & Wilkins, Chartered, Phoenix, Arizona and Eugene O.
26 Duffy and William A. Wiseman of O'Neil, Cannon, Hollman, DeJong S.C., Milwaukee, Wisconsin.
Plaintiffs' Counsel may be contacted in writing at: FERC2 Refund Litigation, P.O. Box 1289,

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1 Phoenix, Arizona 85001-1289.

2 3. **Recommendation of Plaintiffs' Counsel.** Plaintiffs' Counsel have been engaged in the
3 Litigation of this dispute for 16 years. They have conducted a thorough and intensive examination
4 into the facts and law relating to the final phase of this Litigation — the entitlement of Claimants to
5 additional refunds and the delay and risks to Claimants in view of the defenses available to the
6 Department to reduce or avoid the payments of refunds otherwise due.

7 Among other things, the Settlement provides Claimants eligible for refunds under the terms of
8 the Settlement with certainty of payment and the elimination of further delay. Based upon their
9 evaluation of the benefits which the Settlement will provide to Claimants, Plaintiffs' Counsel have
10 advised Plaintiffs that the Settlement is fair, reasonable and adequate.

11 4. **Final Approval Hearing.** The Tax Court has preliminarily approved the Settlement.
12 However, final approval will not be granted until after the final Settlement approval hearing ("Final
13 Approval Hearing"). The Final Approval Hearing will be held before the Honorable Mark W.
14 Armstrong on August 4, 2006, at 9:00 a.m., Arizona time, Maricopa County Superior Court,
15 Northeast Regional Court Center, 18380 North 40th Street, Phoenix, Arizona 85032, Courtroom
16 109. The purpose of the Final Approval Hearing is to determine whether the Settlement should be
17 finally approved by the Tax Court. The Final Approval Hearing may be adjourned by the Tax Court
18 from time to time without further notice.

19 5. **Right to Appear at Final Hearing.** At the Final Approval Hearing, any Claimant may
20 appear in person or through counsel and be heard concerning the fairness, reasonableness and
21 adequacy of the Settlement. Claimants who support the proposed Settlement do not need to appear
22 at the hearing or take any other action to indicate their approval. However, no person will be heard
23 in opposition to the Settlement or the determination of attorneys' fees and costs and no papers
24 submitted by any person will be considered by the Tax Court unless, on or before June 26, 2006,
25 such person (a) files with the Clerk of the Maricopa County Superior Court, Central Courthouse, 201
26 West Jefferson, Phoenix, Arizona 85003 a notice of his/her intention to appear, together with proof
27 of status as a Claimant and a written statement that details the specific objection and basis for such
28 objection; (b) if the objection concerns attorneys' fees, files an affidavit attesting to whether the
Claimant received the prior written notice of the Tax Court's fee hearing held on April 3, 1998, and
whether the Claimant received any refunds under ITR 98-1, and (c) serves copies of any papers filed
with the Tax Court upon each of the following attorneys:

PLAINTIFFS' COUNSEL

Randall D. Wilkins, Esq.
FERC2 Refund Litigation
Attention: Objections to
FERC2 Settlement
P.O. Box 1289
Phoenix, Arizona 85001-1289

COUNSEL FOR DEFENDANTS

William A. Richards, Esq.
Senior Litigation Counsel - CIVIL DIVISION
Attention: Objections
1275 West Washington
Phoenix, Arizona 85007-2926

All documents filed with the Tax Court shall be signed pursuant to **Rule 11, Ariz. R. Civ. P.**

6. **Common Fund Case.** A common fund case arises where a successful suit, brought by representative plaintiff(s), results in the creation of a monetary fund that benefits a limited and identifiable group similarly situated to the representative plaintiff(s). The 1998 Judgment determined that this case is a common fund case and that the total refunds and interest paid by the Department under the program implemented pursuant to ITR 98-1 constituted the common fund. The Settlement represents a compromise of disputed Claims to enforce the 1998 Judgment, which results in a monetary fund for the benefit of the Claimants who meet the eligibility requirements for a refund under the Settlement.

7. **Attorneys' Fees.** Consistent with the provisions of the 1998 Judgment, Plaintiffs' Counsel have applied for an award of 20 percent of the Common Fund under the Settlement for their services and expenses. If the Tax Court approves the Settlement, a hearing on the Attorneys' Fees Application will be held on August 4, 2006 at 9:00 a.m., Arizona time, Maricopa County Superior Court, Northeast Regional Court Center, 18380 North 40th Street, Phoenix, Arizona 85032, Courtroom 109, immediately following the Final Approval Hearing. Any Claimant may appear in person or through counsel and be heard concerning the application of Plaintiffs' Counsel for the award of attorneys' fees and expenses. However, no person will be heard in opposition to Plaintiffs' Counsel's application and no papers submitted by any person will be considered by the Tax Court unless he or she files and serves all papers in the manner specified in paragraph 5 above.

8. **Change of Address.** If this notice reached you at an address other than the address printed on the notice or if you recently have moved, please send your current address to the Arizona Department of Revenue, P.O. Box 29099, Phoenix, Arizona 85038-9099, attention FERC Settlement. If you change your address before this case is finally resolved, you should immediately notify the Arizona Department of Revenue of that change in writing. If you filed a joint return for any of the years 1985 to and including 1990, please also include your spouse's name, social security number and current address and telephone number (if different).

9. **Examination of Papers.** This summary of the Settlement and the description of the

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1 Litigation is not intended to be complete or exhaustive. For a more detailed statement of the matters
2 involved in this Litigation, including all the terms of the Settlement, you are referred to the
3 Stipulation of Settlement dated April 19, 2006 and to the pleadings, motions, transcripts and other
4 documents filed in this Litigation, including the 1998 Judgment, all of which are on file with the
5 Clerk and which may be examined during regular business hours at the office of the Clerk of the
Court Records, Maricopa County Superior Court, 601 West Jackson, Phoenix, Arizona 85003. The
Stipulation of Settlement may also be reviewed at the Department's internet website at
www.azdor.gov and at Plaintiffs' Counsel's website at www.ferc2refunds.com.

6 10. **Further Proceedings.** If the Settlement is approved by the Tax Court, the process of
7 implementing the Settlement will begin without delay. Upon the final payment by the Department
8 of all sums due Claimants and Plaintiffs' Counsel, and satisfaction of all of the Department's
9 obligations under the Settlement, the Plaintiffs will file a satisfaction of the 1998 Judgment and any
10 final judgment entered pursuant to the Settlement. If the Settlement is not approved, the case will
continue to be prepared for trial or other judicial resolution of the claims and defenses on the issues
of whether Claimants are eligible for additional refunds and, if so, the amount of refunds due to
Claimants and whether the case should be certified as a class action.

11 **PLEASE DO NOT TELEPHONE THE JUDGE OR THE COURT CLERK'S OFFICE.**

12 Any correspondence or questions you may have about the matters in this notice may be directed to
13 the Department.

14 **PLEASE REMEMBER TO INCLUDE YOUR NAME, SOCIAL SECURITY**
15 **NUMBER AND CURRENT ADDRESS AND TELEPHONE NUMBER IN ALL**
16 **COMMUNICATIONS.** If you filed a joint return for any of the years 1985 to and including 1990,
please also include your spouse's name, social security number and current address and telephone
number (if different).

17 DATED this 25th day of April, 2006.

20 /s/ Mark W. Armstrong
21 Hon. Mark W. Armstrong
22 Judge of the Superior Court
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